

Attorney Document No: 15309-1US PM/MG/al

REMARKS

Claim 1 has been amended to more distinctly and explicitly define the invention and also to more clearly distinguish over the applied Yamamoto reference.

REJECTION UNDER 35 U.S.C. § 102(b)

The examiner is respectfully requested to reconsider the rejection of claims 1 to 10 under 35 USC 102(b) as being anticipated by US Pat. 4,357,377 to Yamamoto. Amended claim 1, the broadest claim in the application, relates to a waterproofing membrane 10 that has: 1) a waterproofing material layer 12 with opposite first and second sides; 2) the first side coated with an impervious surfacing material 14 which directly adheres to the waterproofing material layer; and 3) the second side coated with an adherent support sheet 16 allowing passage of the waterproofing material to enter in contact with a surface on which said membrane is to be applied.

Yamamoto does not disclose or even suggest that the first side of the waterproofing material layer 11 is coated with an impervious surfacing material that directly adheres to the waterproofing material. Since Yamamoto does not disclose this feature of an

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impervious layer directly against the first side of the waterproofing material layer, Yamamoto cannot be said to anticipate the claim.

Yamamoto does disclose two layers 12 and 13 directly against either side of the waterproof material layer 11. However, as the examiner herself states in the Action, the layers 12 and 13 are both permeable to the waterproofing material layer and thus neither layer is impermeable. Yamamoto states on col. 5, line 13, 14 that fibrous sheets impregnated with bitumen can be used. Thus both sheets are permeable. Yamamoto also states in col. 5, lines 15 to 22 that with some sheet material, the sheets do not need impregnation with bitumen since the bitumen layer to which they are adhered permeates the fibrous sheets. Thus Yamamoto clearly discloses that both sheets 12 and 13, directly adjacent the sides of the waterproofing layer, are permeable to bitumen and that neither one is impermeable. Applicant's claim 1 however clearly specifies one of the sheets to be impervious or impermeable and this sheet directly adheres to the waterproofing layer.

To reject the claims, the examiner equates the insulating layer 14 of Yamamoto as equivalent to applicant's impervious surfacing material. (see lines 8 to 10 of para. 3 of the last Office Action). The examiner conveniently ignores the fact that this insulating layer, while it may be impervious, is not directly against one side of the waterproofing layer 11, as called for in applicant's claim 1, but is instead against one of the permeable sheets 13. Thus again, claim 1 is not believed to be anticipated by Yamamoto since the impervious

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layer (the insulating layer 14) in Yamamoto is not directly on the one side of the waterproofing layer.

One aspect of applicant's invention is to provide a waterproofing membrane that does not, due to the one impervious layer, need a release layer. Applicant's membrane can be supplied in a rolled condition and, due to the impermeable layer, can be easily unrolled and applied, via the permeable layer, which is soaked through with bitumen, directly on the surface it is to be applied. The Yamamoto membrane on the other hand, because of its construction needs a release sheet on the membrane, particularly on the side having the pervious layer 12. While the simplified embodiment shown in Fig. 1 shows no release layer, one would be needed if this embodiment were to be used, as is, since the layers could not be transported or handled, rolled or stacked, without having a release layer. Embodiments with the additional bitumen coated layer 16 are specifically used with a release layer. (see col. 6, lines 26 to 34 and lines 40 to 43 of the patent).

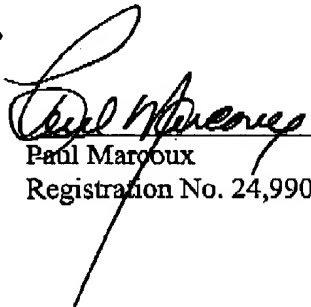
Applicant's membrane is obviously much simpler in construction, having only three layers, and thus cheaper than the Yamamoto membrane which at its simplest, as shown in Fig. 1, has three layers plus requiring a release layer. Applicant's membrane is also more easily handled than the Yamamoto membrane since a release layer does not have to be removed before application.

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In view of the above differences between applicant's membrane, as set out in amended claim 1, and the Yamamoto membrane, it is respectfully submitted that the rejection under 35 USC 102 (b) of anticipation be withdrawn. Since the remaining claims are dependent on claim 1, is believed that the rejection of these claims for anticipation should also be withdrawn.

Respectfully,

By:


Paul Marcoux
Registration No. 24,990

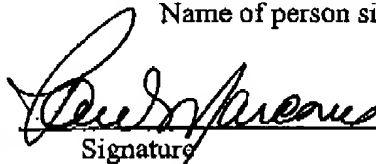
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the
Patent and Trademark Office on the date shown below.

Paul Marcoux, Reg. No. 24,990

Name of person signing certification


SignatureMay 5, 2004

Date

Interview Summary	Application No.		Applicant(s)	
	09/933,798		FAUCHER, DENIS	
	Examiner		Art Unit	
	Terrel Morris		1771	

All participants (applicant, applicant's representative, PTO personnel):

(1) Terrel Morris. (3) _____

(2) Jack Paavila. (4) _____

Date of Interview: 04 November 2003.

Type: a) ☐ Telephonic b) ☐ Video Conference
c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____

Claim(s) discussed: Claim 1 specifically, all generically.

Identification of prior art discussed: Yamamoto.

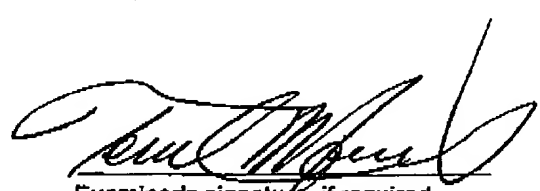
Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Discussed the interpretation of the claims from the examiner's point of view and the applicant's intention. It was offered to put "directly" into the claim, to define the relationship of the impervious surfacing material to the water-proofing material. The Examiner indicated that such further definition would avoid the currently applied art.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

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	09/833,798		FAUCHER, DENIS	
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Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.136. (35 U.S.C. 132)

37 CFR § 1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiner's Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case, it should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.